

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-006285

09/20/2012

HONORABLE MICHAEL J. HERROD

CLERK OF THE COURT
K. Gilmet
Deputy

GOLDMAN GROUP I X, L L C

DAVID C TIERNEY

v.

CITY OF PHOENIX, et al.

MARIO BRENNAN RAY

WILLIAM A MILLER

TRIAL SET
FINAL PRETRIAL CONFERENCE SET
ORAL ARGUMENT SET

Courtroom 411 – East Court Building

8:28 a.m. This is the time set for a telephonic Status Conference. Counsel, David C. Tierney, is present telephonically on behalf of Plaintiff, Goldman Group IX, LLC. Counsel, Andrew Abraham, is present telephonically on behalf of Defendants City of Phoenix and Debra Stark. Counsel, William A. Miller, is present telephonically on behalf of Defendant Bethany Core, LLC.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding the status of the case.

Argument is heard regarding disputes as it relates to the taking of depositions and Rule 30(b)(6).

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IT IS ORDERED that Defendant City of Phoenix shall brief the issue of why Mr. William Allison, Esq. should have immunity as it relates to his deposition no later than **5:00 p.m. on October 2, 2012.**

IT IS FURTHER ORDERED that Plaintiff shall file a Response no later than **5:00 p.m. on October 12, 2012** and Defendant City of Phoenix's Reply shall be filed no later than **5:00 p.m. on October 19, 2012.**

IT IS FURTHER ORDERED the parties shall brief the issue of whether Plaintiff is required to request a Rule 30(b)(6) deposition rather than notice individual depositions in the same briefs.

IT IS FURTHER ORDERED setting Oral Argument regarding Bethany Core, LLC's Motion for Summary Judgment in this division on **November 2, 2012 at 10:00 a.m.** Any Motions for Summary Judgment that are ripe for decision at that time will also be heard. Counsel's arguments are limited to fifteen (15) minutes per side. If additional time is requested, counsel shall contact the Court.

THE HONORABLE MICHAEL J. HERROD

Maricopa County Superior Court
101 W. Jefferson ECB - 411
Phoenix, AZ 85003
(602) 372-0359

Unless otherwise advised by the Court at oral argument, the parties should assume that the Court has reviewed the parties' memoranda. Accordingly, the parties should be prepared to focus on the key issues in dispute and to answer questions from the Court.

The proceeding will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by audio and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$20.00 charge. If a CD is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center.** Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-

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506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's video recording system before requesting a court reporter. If a court reporter is required, the Court must receive a written request at least 3 court days before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

IT IS ORDERED setting a **Final Trial Management Conference and Hearing on Motions in *Limine*** in this division for **February 8, 2013 at 11:00 a.m.** with **counsel to appear in person.**

THE HONORABLE MICHAEL J. HERROD
Maricopa County Superior Court
101 W. Jefferson – Courtroom 411
Phoenix, AZ 85003
(602) 372-0359

The Joint Pretrial Statement in accordance with Rule 16(d), A.R.C.P., is due by **5:00 p.m., five (5) days prior to the Final Trial Management Conference.** In addition to the information required by Rule 16(d), counsel are to identify in/with the joint pretrial statement *all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.*

The Joint Pretrial Statement should include:

- A stipulated statement, written in layman's terms, to be read to the jury;
- Proposed voir dire questions;
- This Court **orders that voir dire will be terminated** *immediately* upon any attorney arguing his/her case, seeking commitments, interjecting prejudicial or irrelevant matters or wasting time.
Voir dire is limited to questions revealing attitudes, biases and beliefs that cannot be overcome with rehabilitation.
- *A joint list of agreed-upon preliminary and final jury instructions.* All proposed jury instructions must be **completely written out** (not just referred to by their RAJI numbers) and submitted by e-mail in Microsoft Word 2003 to CordesM@superiorcourt.maricopa.gov.

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Any requested jury instructions that have been objected to shall also be submitted by e-mail following those agreed upon, along with the legal reasons for the objections. Please read Rosen v. Knaub, 175 Ariz. 329, 857 P.2d 381 (1993); and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.

- Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.
- Proposed Findings of Fact and Conclusions of Law (if a request for Findings of Fact and Conclusions of Law has been or will be filed). If no proposed Findings of Fact and Conclusions of Law is received, the request shall be deemed waived.
- Counsel shall provide a list of all the witnesses and exhibits, ***designating those which are stipulated to***, and providing legal objections to those exhibits not agreed upon.
- The number of jurors, including alternates needed.

IT IS FURTHER ORDERED that no less than thirty (30) days prior to the Final Pre-Trial Management Conference, counsel (or the parties) shall file: Motions *in limine*, which must meet the test of State v. Superior Court, 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." Written responses to a motion *in limine* may be filed no later than ten (10) days after receipt of the motion *in limine*. There are to be no replies filed. Counsel **shall meet and confer** to identify disputed evidentiary issues that are anticipated to be the subject of motions *in limine*. **If the parties' Motions contain citations to out-of-state cases, that party shall provide the Court with copies of those cases.**

IT IS FURTHER ORDERED that all documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

IT IS FURTHER ORDERED setting this matter for **Trial to a Jury which will be part advisory as to the equitable issues** in this division commencing on **February 25, 2013 at 9:30 a.m.**

Judge MICHAEL J. HERROD
Maricopa County Superior Court
East Court Building
101 W. Jefferson, Courtroom 411
Phoenix, Arizona 85003
(602) 372-0359
(Allotted time: **3 days**)

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Trial days in this division are Monday through Thursday.

Counsel are advised that the Court is available to discuss, by joint telephone call, discovery disputes or any other matter that may impact the parties' ability to resolve this case in a just, speedy, and inexpensive manner. See Rule 1, Ariz.R.Civ.P.

With respect to discovery disputes, counsel are also advised that, as the Court interprets Civil Rule 37(a)(2)(c), an exchange of correspondence between counsel is not sufficient to satisfy the "personal consultation" requirement of the Rule, except in extraordinary circumstances. At a minimum, counsel must speak to each other by telephone to attempt to resolve the dispute in good faith before involving the Court.

IT IS FURTHER ORDERED:

Marking exhibits. Counsel shall present all exhibits with a list of exhibit descriptions to the Clerk of this Court **no less than ten (10) judicial days before trial**. The exhibits will be marked serially as they are listed in the pretrial statement - Plaintiff's first, Defendant's second. Counsel shall make sure that the clerk does not receive duplicate exhibits from Plaintiff and Defendant. Counsel shall also present original depositions for filing at that time. Original depositions are provided to the clerk for the record and **are not marked** as exhibits. **Please advise the Clerk, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence.** The division clerk should be contacted directly regarding exhibits at (602) 506-7504.

IT IS ORDERED that counsel advise the Court of any need for an interpreter at the Final Pretrial Management Conference.

The proceeding will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by audio and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$20.00 charge. If a CD is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-

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8:44 a.m. Matter concludes.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT	CROSS

DIRECT & CROSS TOTAL: _____

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT	CROSS

DIRECT & CROSS TOTAL: _____

TOTAL WITNESS TIME ESTIMATE: _____